IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12005 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NALANDA COMMUNICATION

Versus

UNION OF INDIA

Appearance:

MR KS JHAVERI for Petitioner

MR UI VYAS, Ld CGSC for respondents

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 24/11/2000

ORAL JUDGEMENT

I have heard Mr.K.S.Jhaveri, learned counsel appearing on behalf of the petitioner. I have also heard Mr.U.I.Vyas, learned ACGSC appearing on behalf of the respondents. Issue rule. Mr.Vyas waives service of rule

on behalf of the respondents.

The petitioner applied for licence to operate as private operator of telephone lines. Accordingly, the respondent Telecom Department granted licence to the petitioner for a period of five years. The period of five years expired, but the Telecom Authority collected the licence fee in advance and they have taken the licence fee upto 31st March, 2001. The petitioner has provided 25 telephone lines to Tele Marketing Solution and the Telecom Authority also provided 75 lines to Tele Marketing Solution. The petitioner provided 25 lines to the said Tele Marketing Solution through group EPBX. The CBI carried out an investigation in the premises of the Tele Marketing Solution and found major irregularities in the use of telephone lines by Tele Marketing Solution and accordingly sealed the premises of the Tele Marketing Solution. The Vigilance Department also made an investigation of the petitioner's premises. Certain irregularities were found by the CBI in respect of the use of telephone lines by the petitioner during the inspection of the premises of the petitioner and they were of the view that the petitioner has violated the conditions Nos.12 and 19 of the agreement and provisions of the Indian Telegraph Act and the CBI has recommended to the Telecom Authority for permanent disconnection of the telephone lines to the petitioner. Mr.Jhaveri contended that according to the agreement, permanent disconnection can be made only after giving 60 days notice. Admittedly, the Telecom Authority has disconnected the 50 lines of the petitioner on 7-11-2000. It is submitted by Mr.Jhaveri that even before the temporary disconnection, the petitioner was not informed. It is also submitted that from the 50 lines (30 outgoing and 20 incoming) the petitioner provided 400 lines to different persons, but when the CBI investigation was done and the premises of the Tele Marketing Solution was sealed, the petitioner has withdrawn 25 lines provided to the Tele Marketing Solution. It is submitted by Mr.Jhaveri that at present there are 375 subscribers through EPBX of the petitioner and because of the withdrawal of 50 lines all the 375 customers are facing extreme difficulty. It is submitted by Mr.Jhaveri that if any illegality or wrong is committed by the petitioner, then the Telecom Authority may proceed in accordance with law, but they cannot suddenly disconnect all the lines causing hardship to the 375 customers. Mr.U.I.Vyas, learned ACGSC appearing on behalf of the respondents produced an order dated 10-11-2000 annexed at Annexure "A" to the petition by which the 50 lines provided by the Telecom Authority to the petitioner has

been disconnected from 7-11-2000. Therefore, it is apparent that when the lines were disconnected on 7-11-2000, there was no intimation to the petitioner. Since no notice has been given or petitioner was not intimated before the disconnection of the lines, Mr.Jhaveri submitted that an interim order is called for for restoring the 50 telephone lines, so as to mitigate the hardship faced by the 375 consumers through the EPBX of the petitioner. It appears that the CBI as well as Vigilance Wing of the Telecom Department made enquiry in respect of the premises of the petitioner and they have recommended for permanent disconnection of the telephone lines of the petitioner. In view of the breach of certain conditions of the agreement and also provisions of the Indian Telegraph Act, the respondents are at liberty to take action against the petitioner in accordance with law, if he violates any of the conditions of the agreement as well as the Indian Telegraph Act, but before making permanent disconnection, it is necessary to give 60 days' notice to the petition as per the Clause 30 of the Agreement executed between the petitioner and the Telecom Authority. It is true that in case of emergency temporary disconnection can be made but in the present case no such emergency has been made out by the respondents. It is true that restoration of telephone lines may again be encouraged illegal use of the telephone lines, but such apprehension of misuse cannot permit the Telephone Authority to disconnect the lines without following the procedural law. Learned ACGSC for the respondents, Mr. Vyas also submitted that the present temporary disconnection is in view of the enquiry being made by CBI and Vigilance Wing of the Telecom Department. There is no bar for the CBI or the Vigilance Wing of the Telecom Department to proceed with the enquiry but unless definite irregularities are established even temporary disconnection cannot be said to be legal. It is true that the Telecom Authority must take an appropriate care that the telephone lines provided to the consumers are not misused or illegally used but because of the apprehension that the telephone lines may be misused or illegally used, the Department cannot stop providing connections to the consumers. It is an admitted fact that the lines have been disconnected on 7-11-2000 and till today the temporary disconnection has not been restored to the petitioner and accordingly 375 customers are suffering because of the non-availability of their telephones. It appears that even after 17 days no definite case has been found against the petitioner. Therefore, I am of the view that an interim order is called for. The Telecom Authority is directed to make an afresh investigation of the premises

of the petitioner particularly regarding the lines that have been provided to the customers and whether there is any irregularities in the supply of telephone lines through EPBX of the petitioner and if the Telecom Authority is satisfied that the lines provided by theNo. 1

correctly given, then the Telecom Authority shall restore the telephone lines to the petitioner immediately. All this process must be completed by the respondent Telecom Authority on or before 28-11-2000. This interim order will not prevent the respondent Authority to proceed against the petitioner regarding the cancellation of the licence in accordance with law. With the aforesaid observations and directions, the petition is disposed of. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

24-11-2000 (P.K.Sarkar, J.)